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Weddings, Whiter Teeth, Judicial- Campaign Speech, and More: Civil Cases in the Supreme Court's 2014-2015 Term

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There can be little doubt about the ruling for which the Supreme Court's 2014-2015 Term will best be remembered. In its penultimate public session—and over four fierce dissenting opinions—the Court struck down all remaining state bans on same-sex marriage, thereby simultaneously setting in place an enormous milestone in the legal rights of America's gays and lesbians and, for the ruling's opponents, raising the specter of *Lochner* and judicial illegitimacy. We will begin by briefly revisiting that landmark ruling and then will turn to the Term's other significant decisions, concerning issues involving administrative law, antitrust, due process, elections and redistricting, employment discrimination, evidence, executive power, fair housing, federal jurisdiction, health care, religion, speech, takings, taxation, and more.

SAME-SEX MARRIAGE

It is inconceivable that this Term summary will be the first to carry the news to anyone that, in *Obergefell v. Hodges*,[1] the Supreme Court ruled that the Fourteenth Amendment grants same-sex couples the right to marry and to have their marriages recognized in all states. Joined by the Court's four Democratic appointees, Justice Kennedy found that "the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty."[2] With respect to the equal-protection claim, the Court did not settle upon a standard of review for sexual-orientation classifications but did twice say that sexual orientation is an immutable trait—a finding that likely helps to lay the groundwork for finding heightened scrutiny appropriate in a future case. The Court's four other Republican appointees each filed dissenting opinions excoriating the majority for, in their view, ignoring the limits of the Constitution and of the judicial role and halting midstream a dynamic public debate about the marital rights of same-sex couples.

Given the ruling's familiarity among all readers, a novel approach to summarizing the majority and principal dissenting opinions seems in order. Here, then, are simply words and phrases from those two texts. Taken together, these snippets nicely capture the stark disagreements that so sharply divided the Court.

From Justice Kennedy's opinion for the majority (with quotation marks omitted): Identity. Profound hopes and aspirations. Centrality. Immutable nature. Fundamental. Individual dignity and autonomy. A lonely person might call out only to find no one there. Loving and nurturing. Keystone of our social order. Demeans gays and lesbians. Stigma and injury. Disparage their choices and diminish their personhood. Disrespect and subordinate. Urgency. Substantial and continuing harm.

From the principal dissent, written by Chief Justice Roberts (with quotation marks again omitted): Not a legislature. Government of laws, not of men. Stealing this issue from the people. Dramatic social change. Act of will, not legal judgment. Just who do we think we are? If I were a legislator. Indefensible as a matter of constitutional law. *Dred Scott*. Aggressive application of substantive due process. Breaks sharply from decades of precedent. Marriage as traditionally defined. *Lochner*. Exalts the role of the judiciary. Celebrate. But [the Constitution] had nothing to do with it.

ADMINISTRATIVE LAW

For nearly 20 years, following its decision in *Paralyzed Veterans of America v. D.C. Arena L.P.*,[3] the District of Columbia Circuit had held that, although the Administrative Procedure Act does not require notice-and-comment procedures when an agency issues a rule interpreting one of its own regulations,[4] such procedures *are* required when an agency wishes to replace one of its existing interpretations with a new interpretation that is significantly different. In *Perez v. Mortgage Bankers Association*,[5] the Supreme Court unanimously rejected the *Paralyzed Veterans* doctrine, finding it inconsistent with the APA's plain language.[6] When poised to withdraw an earlier regulatory interpretation concerning whether mortgage-loan officers are covered by the Fair Labor Standards Act, therefore, the Department of Labor was not required to provide the public with notice or an opportunity to comment.

Perhaps even more importantly, a few justices used the case as an opportunity to signal—for the second time in three years—that major changes may be coming to this area of the law. Two terms ago, in *Decker v. Northwest Environmental Defense Center*,[7] Justice Scalia filed a separate opinion casting doubt on *Bowles v. Seminole Rock & Sand Co.*[8] and *Auer v. Rob-*

Footnotes

1. 135 S. Ct. 2584 (2015).
2. *Id.* at 2604.
3. 117 F.3d 579 (D.C. Cir. 1997).
4. *See* 5 U.S.C. § 553(b)(A).
5. 135 S. Ct. 1199 (2015).
6. *See id.* at 1206 ("Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.").
7. 133 S. Ct. 1326 (2013).
8. 325 U.S. 410 (1945).

bins,[9] the two leading cases calling for judicial deference to agencies' interpretations of their own regulations. Chief Justice Roberts and Justice Alito filed a short opinion in *Decker*, saying that Justice Scalia had raised important issues for determination in a future case. Here in *Mortgage Bankers Association*, Justice Scalia filed another opinion reiterating his concerns,[10] Justice Thomas argued at length that *Seminole Rock* and *Auer* raise separation-of-powers problems,[11] and Justice Alito filed an opinion stating that Justices Scalia and Thomas had "offer[ed] substantial reasons why" the deference prescribed by those cases "may be incorrect" and declaring that these issues should be "explored through full briefing and argument" in a future case.[12] An invitation has plainly been issued.

An even more familiar form of deference—deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*[13] to administrative agencies' reasonable interpretations of ambiguous statutory provisions—also drew the justices' attention this Term. As noted under the Health Care heading below, the Court in *King v. Burwell*[14] found *Chevron* deference categorically inappropriate in the Term's major ruling on the Patient Protection and Affordable Care Act, in large part because the "extraordinary case" involved the expenditure of billions of dollars and the health care of millions of people and thus wasn't likely regarded by Congress as an appropriate occasion for deferring to the Internal Revenue Service. In its ruling handed down several days later in *Michigan v. EPA*,[15] the Court applied the *Chevron* framework but found deference to the EPA inappropriate, concluding that the agency's interpretation of the Clean Air Act was unreasonable. Potentially even more significant in that case was Justice Thomas's concurrence, in which he suggested that the entire *Chevron*-deference regime might be unconstitutional under separation-of-powers principles.

ANTITRUST

If you live in North Carolina and are interested in whitening your teeth, North Carolina's dentists are eager—perhaps a bit too eager, it turns out—to win your business. Beginning in 2006, the North Carolina State Board of Dental Examiners, on which many practicing dentists sit, began sending cease-and-desist letters to non-dentists who were offering teeth-whitening services. The Board contended that those non-dentists were engaged in the unlicensed practice of dentistry. When the Federal Trade Commission (FTC) charged the Board with anticompetitive conduct, the Board sought the shelter of state-action immunity.

The Supreme Court ruled against the Board in *North Carolina State Board of Dental Examiners v. FTC*.[16] Writing for a six-member majority, Justice Kennedy acknowledged that the nation's antitrust laws "confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity."[17] Yet the dentist-laden Board was not entitled to that immunity here, Justice Kennedy explained, because its actions against non-dentists had not been supervised by the State itself and thus State officials were not politically accountable for the Board's anticompetitive actions. Absent such political accountability, the Court reasoned, there was too great a risk that the Board's dentists would restrain trade to advance their private interests. Joined in dissent by Justices Scalia and Thomas, Justice Alito argued that the majority's holding was contrary to the Court's precedent, was in tension with principles of federalism, and would create confusion about what, precisely, a state must do in order to ensure that a given agency can successfully claim immunity.

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DUE PROCESS

In *Kerry v. Din*,[18] Fauzia Din—an American citizen whose spouse formerly worked in Afghanistan's Taliban regime—claimed a violation of her Fifth Amendment procedural-due-process rights. The State Department had denied her husband's visa application and, when it did so, provided no statement of reasons beyond citing the federal statute that withholds visas from persons who have engaged in terrorist activities. A fractured Court rejected Din's claim that, on the strength of a liberty interest in living with her husband in the United States, she was entitled to a more complete explanation of the government's reasons.

Joined by the Chief Justice and Justice Thomas, Justice Scalia concluded that Din did not have any constitutionally protected liberty interest at stake, finding Din's assertion to the contrary "absurd" under the original meaning of the Due Process Clause.[19] Justices Kennedy and Alito found that, even if Din did have a protected liberty interest, she had received all of the process she was owed when the State Department cited the terrorism statute. Joined by Justices Ginsburg, Sotomayor, and

9. 519 U.S. 452 (1997).
10. *See Mortgage Bankers Ass'n*, 135 S. Ct. at 1213 (Scalia, J., concurring in the judgment) ("The agency is free to interpret its own regulations with or without notice or comment; but courts will decide—with no deference to the agency—whether that interpretation is correct.").
11. *See id.* at 1213 (Thomas, J., concurring in the judgment) ("Because this doctrine effects a transfer of the judicial power to an executive agency, it raises constitutional concerns. This line of precedents undermines our obligation to provide a judicial check on the other branches, and it subjects regulated parties to precisely the abuses that the Framers sought to prevent.").
12. *Id.* at 1210-11 (Alito, J., concurring in part and concurring in the judgment).
13. 467 U.S. 837 (1984).
14. 135 S. Ct. 2480 (2015).
15. 135 S. Ct. 2699 (2015).
16. 135 S. Ct. 1101 (2015).
17. *Id.* at 1110 (citing Parker v. Brown, 317 U.S. 341 (1943)).
18. 135 S. Ct. 2128 (2015).
19. *Id.* at 2133 (plurality op.).

The Court found that Elauf could prevail merely by showing that her "need for an accommodation was a motivating factor in [Abercrombie's] decision."

Kagan, Justice Breyer dissented, concluding that spouses have a liberty interest in living together and that "[t]he generality of the statutory provision cited and the lack of factual support mean that here, the reason given is analogous to telling a criminal defendant only that he is accused of 'breaking the law.'"[20]

ELECTIONS AND REDISTRICTING

Led by Justice Ginsburg and joined by Justices Kennedy, Breyer, Sotomayor, and Kagan, the Court held in *Arizona State Legislature v. Arizona Independent Redistricting Commission*[21] that the Elections Clause does not bar Arizona voters from using that state's initiative process to shift from the legislature to an independent commission the task of drawing federal congressional districts. The Elections Clause states that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . ."[22] The Arizona Legislature argued that, in light of that clause's use of the phrase "the Legislature thereof," it had the sole power to draw the state's districts for congressional elections. While concluding that the legislature did have standing to bring that claim (because it was "an institutional plaintiff asserting an institutional injury, and it commenced this action after authorizing votes in both of its chambers"[23]), the Court rejected the legislature's claim on the merits. The Court concluded that the term "legislature" often refers broadly to the law-making power (rather than, more narrowly, to an elected representative body), and that the term carries that broader meaning in the Elections Clause. The clause's main purpose, the Court said, "was to empower Congress to override state election rules, not to restrict the way States enact legislation."[24] Even if the nation's founders did not foresee that citizens in some states would one day make heavy use of initiatives as a law-making method, Justice Ginsburg said, "the invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power."[25]

Chief Justice Roberts wrote the principal dissent, arguing that the majority had failed to "explain how a constitutional provision that vests redistricting authority in 'the Legislature' permits a State to wholly exclude 'the Legislature' from redistricting."[26] If the term "legislature" really were as capacious as the majority found, the Chief Justice argued by way of example, there would have been no need for the Seventeenth Amendment, which transferred the Senator-selecting power from "the Legislature" of each state to "the people thereof."[27]

EMPLOYMENT DISCRIMINATION

ACCOMMODATION

Frequenters of American shopping malls know that Abercrombie & Fitch operates a chain of music-pumping, sexuality-celebrating clothing stores for the younger set. Until just this year, Abercrombie applied a strict "Look Policy" to its employees while they were on the job, regulating their clothing, hair color, nail length, piercings, and more. Samantha Elauf, a practicing Muslim, alleged that she was denied a job at an Abercrombie store because she wore a headscarf; "caps" were among the things the policy banned, and Elauf wore a headscarf to her interview. The Equal Employment Opportunity Commission (EEOC) filed a Title VII suit on her behalf, alleging that Abercrombie had discriminated against her because of her religion.[28] A jury returned a verdict in Elauf's favor, but the Tenth Circuit reversed, finding that Abercrombie could not be held liable because Elauf had not told Abercrombie that she would require a religious accommodation.

Led by Justice Scalia, the Court reversed in *EEOC v. Abercrombie & Fitch Stores, Inc.*[29] Distinguishing between motives and knowledge, the Court explained that "an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed."[30] The Court found that Elauf could prevail merely by showing that her "need for an accommodation was a motivating factor in [Abercrombie's] decision."[31]

CONCILIATION

If the EEOC finds there is "reasonable cause" to believe that a complainant's employer has violated Title VII, the agency is statutorily obliged to "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion."[32] In *Mach Mining, LLC v. EEOC*,[33] the Court unanimously ruled that courts may review the EEOC's compliance with that conciliation-seeking requirement but that the scope of the review is narrow. The Court rejected Mach Mining's argument that courts should "do a deep dive into the conciliation process" akin to courts' immersive involvement in supervising employers' and unions' statutory duty to negotiate with one another in good faith.[34] Rather, Justice Kagan explained, a court only has the power to satisfy itself (on the strength of an EEOC affidavit or otherwise) that the

20. *Id.* at 2146 (Breyer, J., dissenting).
21. 135 S. Ct. 2652 (2015).
22. U.S. Const. art. I, § 4, cl. 1.
23. *Arizona State Legislature*, 135 S. Ct. at 2664.
24. *Id.* at 2657.
25. *Id.*
26. *Id.* at 2678.
27. *See* U.S. Const. art., I, § 3; *id.* at amend. XVII.
28. *See* 42 U.S.C. § 2000e-2(a)(1).
29. 135 S. Ct. 2028 (2015). Justice Alito concurred in the judgment, while Justice Thomas concurred in part and dissented in part.
30. *Id.* at 2033.
31. *Id.* at 2032.
32. 42 U.S.C. ¶ 2000e-5(b).
33. 135 S. Ct. 1645 (2015).
34. *Id.* at 1653-54.

agency has notified the employer of the plaintiffs' allegations and has given the employer some form of "opportunity to discuss the matter in an effort to achieve voluntary compliance."[35]

PREGNANCY DISCRIMINATION

In 1978, Congress amended Title VII by adopting the Pregnancy Discrimination Act, which says two things: that discrimination based upon pregnancy is a form of forbidden sex-based discrimination and that an employer must treat "women affected by pregnancy, childbirth, or related medical conditions . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work."[36] In *Young v. United Parcel Service*,[37] the Court took up the meaning of the latter provision. Peggy Young alleged that her employer, United Parcel Service, violated the Act's second provision by refusing to accommodate her temporary, pregnancy-created inability to lift heavy objects, while nevertheless accommodating certain other (albeit not *all*) classes of employees who were temporarily unable to work. Led by Justice Breyer, a divided Court ruled that the Fourth Circuit had erred when it affirmed the district court's entry of summary judgment for UPS. When a plaintiff brings a disparate-treatment claim alleging intentional discrimination based upon the plaintiff's status as a pregnant woman, the Court said, she may rely upon *McDonnell Douglas*'s familiar, three-phase burden-shifting framework.[38] That is, the plaintiff may first try to present evidence sufficient to support a prima facie claim of intentional pregnancy-based discrimination. If the plaintiff succeeds on that score, the employer may then offer nondiscriminatory reasons for its actions. The plaintiff can then try to prove that the employer's explanation is merely a pretext for forbidden discrimination. When trying to demonstrate pretext, the Court said, a plaintiff may argue that "the employer's policies impose a significant burden on pregnant workers," that the employer's proffered rationale for its actions is "not sufficiently strong to justify the burden," and that an inference of intentional justification is thus appropriate.[39] Here, the majority found that Young had created an issue of material fact on the first of those three phases of analysis and so remanded for further proceedings.[40]

Joined by Justices Kennedy and Thomas in dissent, Justice Scalia argued that, under the Act, Young was entitled to—and had received—"accommodations *on the same terms* as other workers with disabling conditions."[41] By injecting a discussion of "significant burden[s]" and "sufficiently strong" justifications into the analytic framework for disparate-treatment claims, Justice Scalia said, the Court had strayed far from the text of the statute and had muddied Title VII's distinction between disparate-treatment claims and claims alleging disparate impact.[42]

EVIDENCE

In *Warger v. Shauers*,[43] the Court rejected a plaintiff's effort to secure a new trial based upon alleged juror misconduct. After a jury ruled in favor of the defendant in a personal-injury case, one of the jurors provided the plaintiff with an affidavit indicating that, during the jury's deliberations, another juror had made statements which, if true, indicated that she might have lied during *voir dire*. Based upon that account of the jury's deliberations, the plaintiff sought a new trial, but the Court ruled the evidence inadmissible. Rule 606(b)(1) of the Federal Rules of Evidence states that, "[d]uring *an inquiry into the validity of a verdict* . . . , a juror may not testify about any statement made . . . during the jury's deliberations . . . ."[44] The Court found that entertaining the plaintiff's motion for a new trial would entail just such an inquiry.

[T]he Court held that the President has the exclusive "power to recognize or decline to recognize a foreign state and its territorial bounds."

EXECUTIVE POWER & PASSPORTS

Virtually all readers will recall Justice Jackson's famous admonition that the President's powers are at their "lowest ebb" when he acts contrary to the will of Congress.[45] In *Zivotofsky v. Kerry*,[46] we saw that, even when the President's powers are at low tide, they can still be sufficient to deliver him a victory.

The case concerned Menachem Binyamin Zivotofsky's desire to have Israel listed as his place of birth both on his passport and on the consular report of his birth abroad. A 2002 federal statute purported to give him precisely that right. Because Zivotofsky had been born in Jerusalem, however, the State Department declined his request, in keeping with the Executive Branch's long-standing refusal to acknowledge any single country's sovereignty over that coveted and contested city. With Justice Kennedy writing for the majority, the Court found that Congress could not compel the State Department to satisfy Zivotofsky's request. Justice Kennedy explained that, by directing the President to "receive Ambassadors and other public Ministers,"[47] the Constitution gives the President the "recognition power"—the power to decide whether the United States recognizes a given entity as a legitimate state. Based upon that text, together with historical practices, prior Court rulings, and the practical need for the nation to speak with one voice on such matters, the Court held that the President has the exclusive "power to recognize or decline to recognize a foreign state and its territorial bounds."[48] By trying to compel the State

35. *Id.* at 1652.
36. 42 U.S.C. § 2000e(k).
37. 135 S. Ct. 1338 (2015).
38. *See* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).
39. *Young*, 135 S. Ct. at 1354.
40. Justice Alito concurred in the judgment.
41. *Id.* at 1362 (Scalia, J., dissenting) (emphasis in the original).
42. *Id.* at 1364-65 (Scalia, J., dissenting).
43. 135 S. Ct. 521 (2014).
44. Fed. R. Evid. 606(b)(1) (emphasis added).
45. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 635-38 (1952) (Jackson, J., concurring).
46. 135 S. Ct. 2076 (2015).
47. U.S. Const. art. II, § 3.
48. *Zivotofsky*, 135 S. Ct. at 2094.

[T]he Court ruled 5-4 . . . that the Fair Housing Act permits disparate-impact claims, such that a person or entity may be liable . . . even in the absence of discriminatory intent.

Department to issue statements that contradict the President's own recognition judgments about Jerusalem, the Court said, Congress was illegitimately trying to exercise the recognition power for itself.

Justice Thomas concurred in part and dissented in part, distinguishing between passports and consular reports of births abroad. He concluded that none of Congress's enumerated powers authorizes it to demand that Israel be listed as a Jerusalem-born American citizen's place of birth on his or her passport but that Congress could control such matters on consular reports of births abroad pursuant to its powers under the Naturalization Clause.[49] Justice Scalia dissented, joined by the Chief Justice and Justice Alito. He rejected the majority's finding that the President's powers in this area are exclusive, arguing that the statute on which Zivotofsky relied had nothing to do with formally recognizing Israel's sovereignty over Jerusalem, that the statute was a permissible exercise of the Naturalization Clause, and that the majority was facilitating tyranny by allowing the President to claim sole control over foreign-sovereignty issues.

FAIR HOUSING ACT

In one of the Term's most closely watched cases among civil-rights activists, the Court ruled 5-4 in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*,[50] that the Fair Housing Act (FHA) permits disparate-impact claims, such that a person or entity may be liable under the statute even in the absence of discriminatory intent. The FHA declares, among other things, that it is impermissible to "refuse to sell or rent . . . or otherwise make unavailable . . . a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[51] Writing for the majority, Justice Kennedy zeroed in on the "otherwise make unavailable" language and found that, with that phrasing, Congress was targeting "the consequences of an action rather than the actor's intent."[52] The Court relied heavily upon its reading of Title VII in *Griggs v. Duke Power Co.*[53] and on the fact that, when amending the FHA in 1988, Congress took no steps to reject the rulings of nine different circuit courts of appeals that the FHA permits disparate-impact claims. Justice Kennedy emphasized, however, that disparate-impact claims should be allowed only under limited circumstances, such as when government officials cannot identify "valid interest[s] served by their policies."[54]

Joined by Chief Justice Roberts and Justices Scalia and Thomas, Justice Alito wrote the principal dissent, arguing that the phrase "because of" in the statutory language quoted above requires the presence of discriminatory motive or intent. He further contended that *Griggs* is far from a model of admirable statutory interpretation and that the Court's ruling threatened to make it more difficult for government officials to take steps aimed at providing acceptable housing for their poorest residents, lest those steps (such as rodent-infestation treatment) drive up the cost of housing and thereby make that housing less affordable for racial minorities.

FEDERAL JURISDICTION

PLEADING REQUIREMENTS

In a brief per curiam reversal of the Fifth Circuit, the Court ruled in *Johnson v. City of Shelby*[55] that it was error to enter summary judgment for the municipal defendant when the plaintiffs failed to declare explicitly in their complaint that they were making their claims under Section 1983. A plaintiff "must plead facts sufficient to show that her claim has substantive plausibility," the Court explained, but "no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim."[56]

REMOVAL AND THE AMOUNT-IN-CONTROVERSY REQUIREMENT

Over the dissent of four justices who believed the issue was not properly before them, the Court ruled in *Dart Cherokee Basin Operating Co. v. Owens*[57] that, when a defendant attempts to remove a case to federal court on diversity-jurisdiction grounds, the notice of removal need not contain evidence substantiating the defendant's good-faith allegation that the amount-in-controversy requirement is met. Rather, the defendant must submit supporting evidence only if the plaintiff or the court subsequently challenges that allegation.

INJUNCTIVE RELIEF, THE SUPREMACY CLAUSE, AND EX PARTE YOUNG

Dividing 5-4, the Court ruled in *Armstrong v. Exceptional Child Center, Inc.*,[58] that neither the Supremacy Clause nor the principles of equity famously illustrated by *Ex parte Young*[59] enable health-care providers to sue for an injunction that would force a state to comply with Section 30(A) of the Medicaid Act. Section 30(A) requires a state "to assure that [Medicaid] payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to

49. *See* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . To establish an uniform Rule of Naturalization . . . .").
50. 135 S. Ct. 2507 (2015).
51. 42 U.S.C. § 3604(a).
52. *Texas Department of Housing*, 135 S. Ct. at 2518.
53. 401 U.S. 424 (1971).
54. *Texas Department of Housing*, 135 S. Ct. at 2522.
55. 135 S. Ct. 346 (2014).
56. *Id.* at 347.
57. 135 S. Ct. 547 (2014).
58. 135 S. Ct. 1378 (2015).
59. 209 U.S. 123 (1908).

the extent that such care and services are available to the general population in the geographic area."[60] Providers of habitation services in Idaho filed a lawsuit alleging that the state's reimbursement rates were lower than Section 30(A) permits. The Ninth Circuit held that the Supremacy Clause supplied the providers with a cause of action for an injunction compelling the state to increase its rates, but the Supreme Court reversed.

All nine members of the Court agreed that the Supremacy Clause does not itself create causes of action but instead merely "instructs courts what to do when state and federal law clash."[61] The Court divided 5-4, however, on whether relief was available under principles of equity and *Ex parte Young*. Writing for the five-member majority, Justice Scalia found that two aspects of the Medicaid Act signaled Congress's desire to foreclose private enforcement of Section 30(A): Congress's decision to authorize the Secretary of Health and Human Services to withhold Medicaid funds from a state that violates Section 30(A) and the "judicially unadministrable," "judgment-laden . . . complexity" of Section 30(A)'s requirements.[62] Writing for the dissent, Justice Sotomayor argued that Congress surely anticipated that equitable relief would be available, that the remedy of withholding Medicaid funds was far too heavy-handed to be plausibly regarded by Congress as an effective lone remedy, and that the ease with which the majority deemed equitable relief precluded "threatens the vitality of our *Ex parte Young* jurisprudence."[63]

BANKRUPTCY JUDGES, ARTICLE III, AND CONSENT

In its ruling four years ago in *Stern v. Marshall*,[64] the Court held that Article III does not permit a bankruptcy judge to issue a final judgment on a state common-law claim that "is in no way derived from or dependent upon bankruptcy law."[65] The issues last Term in *Wellness International Network v. Sharif*[66] were whether a creditor's particular claim amounted to a *Stern* claim and, if it did, whether *Stern*'s constitutional bar still stood if the parties consented to the bankruptcy court's adjudication of the claim. Wellness (the creditor) sought a bankruptcy court's declaration that a trust the debtor administered was actually the debtor's alter ego and that the trust's assets should therefore be treated as part of the debtor's estate. Led by Justice Sotomayor, the Court ruled 6-3 that, even if the claim was indeed "a *Stern* claim" (an issue the majority declined to reach), the bankruptcy court could take jurisdiction of it. Because "Article III courts retain supervisory authority" over proceedings in bankruptcy courts, the Court said, "allowing bankruptcy litigants to waive the right to Article III adjudication of *Stern* claims does not usurp the constitutional prerogatives of Article III courts."[67] Writing the principal dissent,[68] Chief Justice Roberts—the author of *Stern*—argued that Wellness's claim was not a *Stern* claim and that the bankruptcy court should be allowed to take jurisdiction of the claim on those narrow grounds. By finding that the parties' consent empowers a bankruptcy court to take jurisdiction of a claim that is indeed a *Stern* claim, the Chief Justice argued, the Court was deviating from Article III's requirements and was setting a precedent that invites further "erosion of [Article III courts'] constitutional power."[69]

Justice Kagan reasoned that there is a strong yet rebuttable presumption that statutory limitations periods may be equitably tolled . . . .

EQUITABLE TOLLING

In *United States v. Wong*,[70] the Court ruled 5-4 that the two limitations periods set out in the Federal Tort Claims Act (FTCA)—the two-year period for seeking administrative review and the six-month period for seeking judicial review—are subject to equitable tolling. Relying heavily upon the Court's 1990 decision in *Irwin v. Department of Veterans Affairs*,[71] Justice Kagan reasoned that there is a strong yet rebuttable presumption that statutory limitations periods may be equitably tolled, and she found no persuasive evidence that Congress had intended to exempt the FTCA's time bars from such adjustment. The Government's primary argument had been that the FTCA's limitations periods were jurisdictional and thus beyond courts' power to disregard. The Solicitor General pointed out, for example, that Congress framed those time bars in emphatic language, stating that a claim "shall be forever barred" if the statute's deadlines are not met.[72] The majority found the statute's language unremarkable. Instead, the Court focused on Congress's decision not to "speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts"[73] when describing the limitations periods and on Congress's physical separation of the provisions concerning the filing deadlines and district courts' jurisdiction to hear FTCA claims.

Writing for the dissent, Justice Alito argued that "[t]he statutory text, its historical roots, and more than a century of precedents show that [the FTCA's] absolute bar is not subject to equitable tolling."[74] Pointing to the statute's unqualified lan-

60. 42 U.S.C. § 1396a(a)(30)(A).
61. *Armstrong*, 135 S. Ct. at 1383; *see also id.* at 1391 (Sotomayor, J., dissenting) (stating that "the Court is correct that it is somewhat misleading to speak of an implied right of action contained in the Supremacy Clause") (internal quotation omitted).
62. *Id.* at 1385.
63. *Id.* at 1392 (Sotomayor, J., dissenting).
64. 131 S. Ct. 2594 (2011).
65. *Id.* at 2618.
66. 135 S. Ct. 1932 (2015).
67. *Id.* at 1944-45.
68. It is not clear why the Chief Justice labeled his opinion a dissent rather than a concurrence in the judgment: both he and the majority agreed that the bankruptcy court could adjudicate the claim.
69. *Id.* at 1950 (Roberts, C.J., dissenting).
70. 135 S. Ct. 1625 (2015).
71. 498 U.S. 89 (1990).
72. 28 U.S.C. § 2401(b).
73. *Wong*, 135 S. Ct. at 1633 (internal quotations omitted).
74. *Id.* at 1639 (Alito, J., dissenting).

The Court declined to defer to the IRS's interpretation, finding that with "billions of dollars" and the healthcare of "millions of people" at stake, this was an "extraordinary case" in which *Chevron* deference was inappropriate.

guage, for example, Justice Alito wrote that "it is beyond me how *Irwin*'s judge-made presumption announced in 1990 can trump the obvious meaning of a statute enacted many decades earlier."[75]

PATIENT PROTECTION AND AFFORDABLE CARE ACT

In a major victory for the Obama Administration, the Court in *King v. Burwell*[76] rejected a potentially eviscerating attack that had been brought against the Patient Protection and Affordable Care Act. In one of that legislation's previously obscure provisions—Section 36B—Congress had adopted language declaring that taxpayers purchasing health-insurance policies would be eligible for certain federal tax credits only if they purchased their insurance on "an Exchange established by the State."[77] Only 16 states had established their own health-insurance exchanges under the legislation, however, leaving the federal government to establish the exchanges in the other 34. The Internal Revenue Service had interpreted the statute as authorizing tax credits in all states, regardless of which sovereign had established the exchanges.

By a vote of 6-3, and in an opinion by Chief Justice Roberts, the Court ruled that tax credits are indeed available for policies purchased on all exchanges, regardless of whether the state or the federal government set them up. The Court declined to defer to the Internal Revenue Service's interpretation, finding that with "billions of dollars" and the healthcare of "millions of people" at stake, this was an "extraordinary case" in which *Chevron* deference was inappropriate.[78] The Chief Justice also conceded that Section 36B's plain language appeared to support the challengers' interpretation. The Court nevertheless found that other portions of the statute rendered the "established by the State" language ambiguous. Moreover, when considering the legislation's overarching goals, the Court found it implausible that Congress would have wanted to deny tax credits in those states in which the federal government had established the exchanges. Without federal tax credits in those states, far fewer individuals would have been able (and required) to purchase health insurance, thus keeping many healthy premium payers out of the insurance pool—and with those healthy individuals on the sidelines, the costs of coverage would have risen even higher, thereby making coverage financially accessible to even fewer people and putting the whole system into "a death spiral."[79]

Justice Scalia was joined by Justices Thomas and Alito in dissent. He argued that "[w]ords no longer have meaning if an Exchange that is *not* established by a State is 'established by the State'"[80] and that, just as he believed it had three years earlier in *National Federation of Independent Business v. Sebelius*,[81] the Court was abandoning standard principles of statutory interpretation just for the sake of upholding legislation it favored.

RELIGIOUS FREEDOM

The unanimity that eluded the Court in *Burwell v. Hobby Lobby Stores, Inc.*[82]—the high-profile religious-freedom ruling that came down at the end of the 2013-2014 Term—proved achievable this year in *Holt v. Hobbs*.[83] Led by Justice Alito, the undivided Court ruled that the Arkansas Department of Corrections had violated the statutory religious-freedom rights of Gregory Holt, a Muslim inmate. Holt wanted to grow a half-inch beard in accordance with his religious beliefs, but prison officials refused, citing security concerns. The Court held that, contrary to the demands of the Religious Land Use and Institutionalized Persons Act of 2000, Arkansas was substantially burdening Holt's religious practice without a powerful justification for doing so. With respect to Arkansas's suggestion that Holt could successfully conceal contraband in a half-inch beard, for example, the Court believed that prison guards could search Holt's proposed beard as readily as they could search the top of a prisoner's hirsute head.

RESTATEMENTS

One might sensibly ask why "Restatements" appears as a heading in a Term summary of this sort. Here's the answer. In *Kansas v. Nebraska*,[84] the Court adopted a Special Master's recommendations for resolving a water dispute between Kansas and Nebraska. Of broadest interest to judges, practitioners, and scholars will be Justice Scalia's skeptical remarks regarding the law-defining value of Restatements. In a separate, one-paragraph opinion, he wrote:

> [M]odern Restatements . . . are of questionable value and must be used with caution. The object of the original Restatements was "to present an orderly statement of the general common law." Over time, the Restatements' authors have abandoned the mission of describing the law, and have chosen instead to set forth their aspirations for what the law ought to be. . . . Restatement sections [that aim to extend the law in one direction or another] should be given no weight whatsoever as to the current state of the law, and no more weight regarding what the law ought to be than the recommendations of any respected lawyer or scholar. And it cannot safely be

75. *Id.* at 1643 (Alito, J., dissenting).
76. 135 S. Ct. 2480 (2015).
77. 26 U.S.C. § 36B(c).
78. *King*, 135 S. Ct. at 2488-89 (citing Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)).
79. *Id.* at 2492-94.
80. *Id.* at 2497 (Scalia, J., dissenting).
81. 132 S. Ct. 2566 (2012).
82. 134 S. Ct. 2751 (2014).
83. 135 S. Ct. 853 (2015).
84. 135 S. Ct. 1042 (2015).

assumed, without further inquiry, that a Restatement provision describes rather than revises current law.[85]

SPEECH

The Term produced three noteworthy free-speech rulings: one on judges' campaign speech, one on specialty license plates, and one on local sign ordinances.

In *Williams-Yulee v. Florida Bar*,[86] the case concerning judges' campaign speech, the 5-4 Court handed down a rare defeat for a speaker who found herself on the receiving end of a content-based speech restriction. Florida is among the 39 states that select at least some of their judges through popular elections, and is among the 30 states that—in keeping with the American Bar Association's Model Code of Judicial Conduct—do not allow judicial candidates to personally solicit campaign funds. Lanell Williams-Yulee, who was seeking a seat on a Florida county court, sent local voters a letter seeking campaign contributions. The Florida Bar successfully brought ethics charges against her.

Everyone agreed that Florida was discriminating against Williams-Yulee's speech because of its content. For seven justices—Chief Justice Roberts and Justices Sotomayor and Kagan on one side, and Justices Scalia, Kennedy, Thomas, and Alito on the other—that meant strict scrutiny was in order. (Joined by Justice Breyer, Justice Ginsburg wrote separately to argue that states should have "substantial latitude" to limit the role of money in judicial elections.[87] These two justices joined the rest of the Chief Justice's opinion.) Led by Chief Justice Roberts, the majority concluded that this was "one of the rare cases in which a speech restriction" could survive that demanding analysis.[88] The Court first found that Florida had a "compelling interest in preserving public confidence in the integrity of the judiciary." Recent campaign-finance cases in which the Court took a narrower view of the government's compelling interests were inapposite, the Chief Justice said, because those cases concerned politicians, rather than judges who are obliged to pay no regard to the preferences of their supporters.

Turning to the issue that most sharply divided the Court, Chief Justice Roberts then concluded that the law was narrowly tailored. Florida's regulation of judicial candidates' speech was admittedly underinclusive, he said, insofar as the state allowed judges' campaign committees to solicit contributions and allowed judges to send thank-you notes to donors. In an especially important passage, however, the majority found that underinclusiveness is not itself a freestanding problem in free-speech cases. Rather, underinclusiveness becomes problematic when it signals that the government is not actually pursuing the objective it has declared or when it indicates that the law is not actually advancing the government's declared interests. In the eyes of the majority, neither of those problems was present here. Nor did the Court find the law troublingly overinclusive by virtue of the fact that it barred judicial candidates from personally soliciting campaign contributions by any means of communication, from any person, and in any amount. Strict scrutiny does not demand "perfect tailoring," Chief Justice Roberts said, and he refused to "wade into th[e] swamp" of trying to distinguish between the integrity-compromising effects of solicitations communicated by one means rather than another, or sent to one group of prospective donors rather than another, or seeking one amount rather than another.

The Term produced three noteworthy free-speech rulings: one on judges' campaign speech, one on specialty license plates, and one on local sign ordinances.

Joined by Justice Thomas, Justice Scalia found Florida's rule "wildly disproportionate" to its "ill-defined interest" in preserving the reality and appearance of judicial integrity.[89] Justice Scalia argued, for example, that it makes no sense to bar a judicial candidate from seeking campaign contributions from close friends and family members or from sending out mass solicitations that do not "target any listener in particular."[90] Justice Kennedy filed a separate dissent to underscore the importance of protecting free speech in elections of all kinds, and Justice Alito filed a dissent arguing that Florida's law was "about as narrowly tailored as a burlap bag."[91]

As an entryway into the Court's license-plate ruling in *Walker v. Texas Division, Sons of Confederate Veterans*,[92] Justice Alito (again finding himself in dissent) proposed that you take the following test. You are sitting near a roadway in Texas and, as cars pass by, you see many specialty license plates. Some, for example, say "I'd Rather Be Golfing," some say "Roll, Tide, Roll" (accompanied by the University of Alabama's logo), some say "Always One of a Kind" (accompanied by an image of a can of Dr. Pepper), some say "Get It Sold with Re/Max (accompanied by an image of that real-estate company's famous balloon), and so forth. Would you regard those messages as the speech of the cars' drivers or as the speech of the State of Texas itself? The occasion for the thought experiment arose when Texas refused to honor the Sons of Confederate Veterans' request that the state issue a specialty license plate bearing that non-profit organization's name and logo, together with an image of the Confederate flag.

Writing for the five-member majority (consisting of the Court's Democratic appointees and Justice Thomas), Justice Breyer found that all Texas license plates—even plates whose

85. *Id.* at 1064 (Scalia, J., concurring in part and dissenting in part) (quoting *Introduction* to RESTATEMENT OF CONFLICT OF LAWS, at viii (1934)) (citations omitted).
86. 135 S. Ct. 1656 (2015).
87. *Id.* at 1673 (Ginsburg, concurring in part and concurring in the judgment). Justice Breyer also joined the entirety of Chief Justice Roberts's opinion. Justice Ginsburg joined all except the brief section concluding that strict scrutiny was appropriate.
88. *Id.* at 1666.
89. *Id.* at 1676, 1677 (Scalia, J., dissenting).
90. *Id.* at 1679 (Scalia, J., dissenting).
91. *Id.* at 1685 (Alito, J., dissenting).
92. 135 S. Ct. 2239 (2015).

Writing for an eight-member majority . . . , Chief Justice Roberts first found that the government's duty to pay just compensation for physical takings applies to takings of personal property and not just to real property.

messages and designs have been proposed by the likes of golfers, Alabama alumni, the manufacturer of Dr. Pepper, and Re/Max—are Texas's own governmental speech and that the First Amendment rules regarding content- and viewpoint-based discrimination thus do not apply. The Court relied heavily upon its 2009 ruling in *Pleasant Grove City v. Summum*,[93] in which the justices held that monuments in a municipal park are government speech even when they are designed by private parties, and that—without fear of First Amendment liability—Pleasant Grove City thus could decline to erect a monument bearing a religious organization's core principles. Justice Breyer found that specialty plates fall into the same category. Like monuments, he said, states have commonly used license plates to convey messages; Texas takes ownership of any privately prepared license-plate designs that it adopts; and the state has maintained control over which messages the plates convey.

Writing for the Court's four dissenting members, Justice Alito found it implausible that anyone would regard personalized messages of the sort listed above as coming from the State of Texas itself, a conclusion that he bolstered with an appendix showing nearly 60 specialty plates that Texas has approved. In his view, the state had created a limited public forum through its specialty-plate program and thus could not commit viewpoint discrimination when deciding which proposed messages to accept.

The Court's nine members all agreed on the appropriate outcome in *Reed v. Town of Gilbert*;[94] what divided them was the best path to get there. The Town of Gilbert, Arizona, had an elaborate sign ordinance that, on its face, plainly treated signs differently based upon their content. Signs with "ideological" content could be up to 20 square feet and could be posted indefinitely, for example, while a "temporary directional sign relating to a qualifying event" could be no more than 6 square feet and had to be removed within one hour of the advertised event's conclusion. A small church that met in alternating locations and relied heavily upon temporary directional signs challenged the ordinance, saying that it violated the members' First Amendment rights.

Joined by the Chief Justice and Justices Scalia, Kennedy, Alito, and Sotomayor, Justice Thomas concluded that the ordinance was indeed unconstitutional. Because the ordinance was content-based on its face, Justice Thomas explained, it was automatically subject to strict scrutiny, regardless of the purposes that drove the town to enact it. Even if the town's proffered purposes were compelling (namely, preserving the town's beauty and promoting traffic safety), the Court held that the ordinance's content distinctions were "hopelessly underinclusive." Temporary directional signs, for example, are no more or less attractive or dangerous than many of the signs that the town permitted to be larger and to be erected for longer periods. The Court thus found that the ordinance was not actually serving the town's articulated objectives. (*Reed* and *Williams-Yulee* likely will be cited for years to come as the leading pair of cases on underinclusiveness in free-speech analysis.)

Joined by Justices Kennedy and Sotomayor, Justice Alito filed a concurring opinion aimed at assuring readers that, through content-neutral sign regulations, cities will be able to achieve their safety and aesthetic goals. Justice Breyer concurred in the judgment, arguing that strict scrutiny should not *automatically* apply to all content-based speech regulations and that—relying on content discrimination "as a rule of thumb"—a court should instead ask "whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives."[95] Joined by Justices Ginsburg and Breyer, Justice Kagan similarly concurred in the judgment. She argued that the majority's ruling placed countless sign ordinances across the country in jeopardy and that—rather than hold that strict scrutiny automatically applies to all sign ordinances that make content distinctions—the Court should simply have said that the town's ordinance "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test."[96]

TAKINGS

Imagine you are a raisin grower. After you have harvested your raisins each year, a large truck backs up to your facility at the direction of the Department of Agriculture's Raisin Administrative Committee and takes a portion of your crop (47 percent of it in 2002-2003, less of it in others). Whether you are paid anything at all for the seized raisins will depend on whether there is any money left over after the Committee deducts expenses that it incurs in selling or otherwise disposing of the raisins as part of its overall effort to maintain a stable raisin market. In some years, there will be no such funds remaining; in some years, the funds you are paid will amount to less than the costs you incurred to grow the raisins. Yet you presumably derive benefits from the Committee's effort to maintain a healthy raisin market, and those benefits might be substantial. One year, you dig in your heels and refuse to grant the truck access to your crops, and in return the Department of Agriculture fines you in an amount equal to the value of the raisins you refused to hand over, plus an additional sum for your disobedience. Has your property been taken, without just compensation, in violation of the Fifth Amendment's Takings Clause? The Horne family found itself in that situation and brought precisely that claim. And in *Horne v. Department of Agriculture*,[97] the Court ruled in favor of the Horne family.

93. 555 U.S. 460 (2009).
94. 135 S. Ct. 2218 (2015).
95. *Id.* at 2235-36 (Breyer, J., concurring in the judgment).
96. *Id.* at 2239 (Kagan, J., concurring in the judgment).
97. 135 S. Ct. 2419 (2015).

Writing for an eight-member majority (all except Justice Sotomayor), Chief Justice Roberts first found that the government's duty to pay just compensation for physical takings applies to takings of personal property and not just to real property. Distinguishing between regulatory and physical takings, the Court could find nothing in the text or history of the Fifth Amendment to indicate otherwise. The Chief Justice then found that the fact that there had been a physical taking for which just compensation was owed was not negated by the Committee's occasional payments to raisin growers of any net proceeds or by the fact that raisin growers could simply grow other crops if they did not wish to participate in the federal raisin program.

In the most divisive part of the Court's ruling—a part that Justices Breyer, Ginsburg, and Kagan refused to join—the majority refused to remand the case for a calculation that the Government had argued was appropriate. The Government had insisted that remand was needed to determine whether just compensation was owed (and thus whether any Fifth Amendment violation had actually occurred) because, it said, the value of the benefits that the Hornes had derived from the federal raisin program might well have exceeded the value of the raisins that the Government wished to collect. The majority declined to take that approach, however, finding instead that the benefits of a regulatory program cannot themselves constitute just compensation for a physical taking. Rather, just compensation must be measured by the value of the physically taken property itself. Joined by Justices Ginsburg and Kagan, Justice Breyer embraced the Government's argument on this point, finding that if the benefits of the federal raisin program exceeded the value of the raisins taken, then there had been no violation of the Fifth Amendment.

TAXATION

Those who have earned income in multiple states over the course of a single year know that states commonly offer their residents an income-tax credit for taxes paid to other states on income earned in those other jurisdictions. Maryland chose not to fully provide such a credit,[98] and so residents like Brian and Karen Wynne found themselves being taxed twice on the same portion of their income. In *Comptroller of the Treasury of Maryland v. Wynne*,[99] the Court ruled 5-4 that Maryland's taxation system violated the dormant Commerce Clause. Joined by Chief Justice Roberts and Justices Kennedy, Breyer, and Sotomayor, Justice Alito explained that, under the Court's precedents, the Constitution forbade Maryland from implementing a system of taxation that treated interstate economic activity less favorably than it treated economic activity within its own borders. Applying the "internal consistency test," the Court asked whether interstate commerce would be disadvantaged, relative to intrastate commerce, if every state in the Union adopted a taxation system identical to Maryland's.[100] The Court found that it would and that Maryland's system was thus indistinguishable from a tariff.

[T]he Court ruled 5-4 that Maryland's taxation system violated the dormant Commerce Clause.

Joined by Justices Scalia and Kagan in dissent, Justice Ginsburg argued that the majority's ruling robbed Maryland of its ability to make a constitutionally permissible policy choice and that the Wynnes' remedy lay in their state's political processes. Joined in relevant part by Justice Thomas, Justice Scalia wrote separately to underscore his skepticism about much of the dormant Commerce Clause enterprise and to argue that, while the "internal consistency test" might resemble one formulation of Immanuel Kant's categorical imperative, it has no roots in the Constitution's text or structure. In a separate dissent, Justice Thomas reiterated his previously announced willingness to abandon the dormant Commerce Clause altogether.

Meanwhile, to facilitate its own tax-collection efforts, Colorado enacted a law requiring retailers that do not themselves collect Colorado sales and use taxes to notify consumers of their state tax obligations and to provide the Colorado Department of Revenue with periodic reports on the retailers' transactions with Colorado residents. The Direct Marketing Association—a trade group that includes online retailers and others who market their products directly to consumers—challenged the law. They argued that, among other things, the law was simply a device to evade *Quill Corp. v. North Dakota*,[101] the 1992 case in which the Court held that retailers cannot be compelled to collect sales taxes from customers in states with which the retailers lack a "substantial nexus." The Tenth Circuit held that the Tax Injunction Act barred federal courts from enjoining enforcement of the Colorado law. In *Direct Marketing Association v. Brohl*,[102] the Court unanimously reversed, finding that an order blocking Colorado's notice and reporting requirements would not (in the words of the Tax Injunction Act) "enjoin, suspend or restrain the assessment, levy or collection" of Colorado taxes.[103]

The retailers' victory celebration was undoubtedly tempered by Justice Kennedy's concurrence. Acknowledging that the issue was not now properly before the Court, Justice Kennedy wrote separately to say that online retail sales have grown stratospherically in the years since *Quill* was decided, that *Quill* is "inflicting extreme harm and unfairness on the States," and that the Court should find an opportunity to reconsider *Quill*'s "doubtful authority."[104] Should the Court indeed abandon *Quill* in a future case, online retailers might look back on *Direct Marketing Association* as a brief and largely inconsequential victory.

98. Maryland provided the credit for what it called the "state" portion of its income taxes but not for what it called the "county" portion of its income taxes.
99. 135 S. Ct. 1787 (2015).
100. *Id.* at 1802.
101. 504 U.S. 298 (1992).
102. 135 S. Ct. 1124 (2015).
103. 28 U.S.C. § 1341.
104. *Direct Marketing Ass'n*, 135 S. Ct. at 1134 (Kennedy, J., concurring).

OTHER NOTABLE RULINGS

In *Integrity Staffing Solutions, Inc. v. Busk*,[105] the Court held that federal law does not require employers to pay employees for the time they spend undergoing antitheft security screenings at the end of their shifts.

In *T-Mobile South, LLC v. City of Roswell*,[106] the Court ruled that, when denying an application to build a cell-phone tower, a locality must provide a written statement of the reasons for the denial and—although the notification of the denial and the statement of reasons need not appear in the same document—the two must be provided "essentially contemporaneously" with one another.[107]

Divided 5-4, the Court ruled in *Michigan v. EPA*[108] that—even though the EPA eventually conducted cost-benefit analyses indicating that the benefits of regulating fossil-fuel-fired power plants would easily justify the costs—the EPA erred by not considering costs at all when initially determining whether such regulation was (in the language of the Clean Air Act Amendments of 1990) "appropriate and necessary."

The Court divided 5-4 on several issues in *Alabama Legislative Black Caucus v. Alabama*,[109] including on whether the plaintiffs had pled an Equal Protection Clause claim of district-specific racial gerrymandering. A majority of the justices concluded that they had. Led by Justice Scalia, the dissenters accused the majority of "act[ing] as standby counsel for sympathetic litigants" and of "invit[ing] lower courts similarly to depart from the premise that ours is an adversarial system whenever they deem the stakes sufficiently high."[110]

Resolving a circuit split, the Court ruled unanimously in *Bullard v. Blue Hills Bank*[111] that a bankruptcy court's refusal to confirm a debtor's proposed repayment plan under Chapter 13 is not a final order that the debtor can immediately appeal as of right, so long as the court's order "leaves the debtor free to propose another plan."[112]

The Bankruptcy Code authorizes bankruptcy trustees to hire attorneys and other professionals to assist them with their duties. In *Baker Botts L.L.P. v. ASARCO LLC*,[113] the Court held that the Bankruptcy Code does not authorize a bankruptcy court to award attorneys' fees to those professionals for time they spend defending their fee applications.

Drawing from the law of trusts, the Court held in *Tibble v. Edison International*[114] that the beneficiaries of a retirement plan covered by ERISA may bring an action against their plan's fiduciaries for failure "to properly monitor investments and remove imprudent ones," so long as the alleged breach of that ongoing fiduciary obligation occurred within the prior six years.[115]

In *Kimble v. Marvel Entertainment, LLC*,[116] the Court refused to abandon its 1964 ruling in *Brulotte v. Thys Co.*[117] that a patent holder cannot charge royalties for the use of his or her invention after the patent's term has expired. Marvel Entertainment was thus allowed to escape from a contract in which it had agreed to pay royalties—apparently in perpetuity—to the inventor of a toy that allows one to shoot foam from the palm of one's hand, à la Spider Man. And with that gift-shopping idea, we bring this year's Term summary to a close.

LOOKING AHEAD

Among the headlines next Term will be the Court's ruling in *Fisher v. University of Texas at Austin*,[118] in which the justices will return to the divisive topic of affirmative action in higher education. Another attention-grabbing case will be *Friedrichs v. California Teachers Association*,[119] in which the Court will re-examine whether public-sector employees can be compelled to make financial contributions to unions (a question on which some of the justices have recently expressed strong doubts, as signaled by the "Doubting *Abood*" title of last year's Term summary). Among the many other civil-law issues currently slated for the justices' attention are whether Indian tribal courts may adjudicate tort claims against nonmembers,[120] whether a state can be sued in another state's courts without its consent,[121] whether the focus should be on total population or on voter population when deploying the Equal Protection Clause's "one person, one vote" principle,[122] the test for calculating the statute of limitations in federal constructive-discharge claims,[123] the breadth of Congress's power to confer standing for claims of statutory violations,[124] and the appropriate use of statistical averages when evaluating whether class certification is appropriate.[125]

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105. 135 S. Ct. 513 (2014).
106. 135 S. Ct. 808 (2015).
107. *Id.* at 812.
108. 135 S. Ct. 2699 (2015).
109. 135 S. Ct. 1257 (2015).
110. *Id.* at 1275 (Scalia, J., dissenting).
111. 135 S. Ct. 1686 (2015).
112. *Id.* at 1692; *see also id.* ("This is so, first and foremost, because only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties.").
113. 135 S. Ct. 2158 (2015).
114. 135 S. Ct. 1823 (2015).
115. *Id.* at 1828-29.
116. 135 S. Ct. 2401 (2015).
117. 379 U.S. 29 (1964).
118. No. 14-981.
119. No. 14-915.
120. Dollar General Corp. v. Mississippi Band of Choctaw Indians, No. 13-1496.
121. Franchise Tax Board of California v. Hyatt, No. 14-1175.
122. Evenwell v. Abbott, No. 14-940.
123. Green v. Donahoe, No. 14-613.
124. Spokeo, Inc. v. Robins, No. 13-1339.
125. Tyson Foods, Inc. v. Bouaphakeo, No. 14-1146.